

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RACHELLE RAND, ESPERANZA GOTTSCHAU, and RAMON SOTO, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

EYEMART EXPRESS, LLC,

Defendant.

Case No.: 3:24-cv-00621-N

**DEFENDANT EYEMART EXPRESS, LLC'S RULE
12(B)(1) AND 12(B)(6) MOTION TO DISMISS**

Defendant Eyemart Express, LLC (“Eyemart”) hereby moves to dismiss all claims asserted in Plaintiffs Rachelle Rand, Esperanza Gottschau, and Ramon Soto’s original class action Complaint (“Complaint”) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

1. Plaintiffs’ putative class action Complaint arises from allegations that Eyemart, by operating its website, violated three separate wiretap laws—the Federal Wiretap Act (Count I), the Missouri Wiretap Act (Count II), and the Illinois Eavesdropping Act (Count III)—and further that Eyemart intentionally intruded upon Plaintiffs’ seclusion (Count IV) and breached implied and express contracts (Counts V-VI). *See* Complaint.

2. As described in more detail in Eyemart’s Memorandum in Support, because Plaintiffs fail to allege any harm, they lack standing to maintain this action. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). This Court should therefore dismiss the Complaint for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1).

3. Alternatively, as described in more detail in its Brief in Support, dismissal is also warranted under Fed. R. Civ. P. 12(b)(6). Plaintiffs' Complaint should be dismissed because Plaintiffs' allegations do not contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

WHEREFORE, Eyemart respectfully requests that this Court grant its Motion to Dismiss for the reasons set forth herein and the accompanying Memorandum in Support, dismiss Plaintiffs' Complaint with prejudice, and award to Eyemart any further relief to which it is justly entitled.

Dated: May 6, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 6th, 2024, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system. Any other counsel of record will be served by a facsimile transmission and/or first-class mail.

/s/ Andrew F. Newman _____

Andrew F. Newman